

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:)
CHALEK, Matthew J.)
Serial No. 09/955,916) Examiner Michael Brown
Filed 09/18/2001) Art Unit 3764
For: Reusable/Disposable Thermal Application)
And Holder Device)

Docket No. 7097.02.01

DECLARATION (Commercial Success)

I, Matthew J. Chalek, of P.O. Box 4411, Englewood, Colorado 80155, do hereby declare as follows:

1. I am presently the Manager and President of Accu-Fitness, LLC, which conducts business in the fitness and health industry. I am also the applicant and inventor in United States Patent Application serial no. 09/955,916, filed 09/18/2001, for "Reusable/Disposable Thermal Application and Holder Device."
2. Accu-Fitness, LLC, produces and markets the product described and claimed in my above-referenced patent application (hereinafter, the "Product"). Through Accu-Fitness, I began sales and marketing efforts in the 3rd quarter of 2001, at about the time the above-referenced patent application was filed. I provide the Product in two ways: First, I package and sell the Product under the Accu-Fitness' house trademark, "Heat Zone." Second, I package the produce on an OEM basis for various commercial merchants or resellers, under the reseller's chosen trademark and package design.
3. The competition for this general type of product includes some of the largest and most famous marketers in the United States. For example, I believe the giant health and fitness marketer, Procter and Gamble, is the market leader. Accu-Fitness is extremely small by comparison, so Accu-Fitness tries to compete by producing a product with unique features that will offer added value to our customers so as to be competitively attractive.
4. Our sales volume for the Product has grown over the approximately eight quarters that I

have offered the Product. In the beginning, the 3rd quarter of 2001 realized about 400 unit sales. Since then, the unit sales have expanded significantly. From inception through almost the entire 3rd quarter of 2003, our unit sales exceed 160,000 units. Thus, over approximately eight quarters, unit sales now total better than 400 times the initial quarter's performance.

5. Cumulative product sales revenue now exceeds \$400,000. This total is better than 350 times the initial quarter's performance.
6. Considering that this product has been available for only eight quarters or two years, the performance measurements mentioned above can be interpreted as showing market gain and, hence, success -- all in a tough market dominated by larger players.

VERIFICATION:

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any document or any registration resulting therefrom.

Declared at Englewood, Colorado, this 19 day of November 2003.


Matthew J. Chalek